IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DIVISION OF TENNESSEE KNOXVILLE DIVISION

PARTYLITE GIFTS, INC.,)
Plaintiff,)
v.) No. 3:06-CV-00170
SWISS COLONY OCCASIONS a/k/a)
ACCESS VENTURES, INC.,)
SWISS COLONY, INC.,)
AND KATHY WATKINS,)
Defendants.)

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ENFORCE SETTLEMENT

Comes the Defendant, Kathy Watkins, ("Watkins") by and through counsel, and submits this Memorandum of Law in Support of Motion to Enforce Settlement.

As demonstrated in her Motion, she and Access Ventures, d/b/a Swiss Colony Occasions ("Occasions"), came to an agreement to settle all differences between them. The essential terms of the agreement are (1) an agreed upon consideration; (2) the exchange of mutual releases; (3) the terms of the settlement will remain confidential; and (4) Ms. Watkins would obtain dismissal of PartyLite's dismissal against her. Watkins has obtained dismissal of PartyLite's lawsuit against her by stipulation entered in this case on August 28, 2008. There is no dispute as to the consideration or the confidentiality. However, Occasions has refused and continues to refuse to execute a settlement agreement which contains mutual releases and to consummate the settlement.

Settlement agreements, even if oral, are enforceable by courts. *Bamerilease Capitol Corp. v. Neaburg*, 958 F.2d 150, 152 (6th Cir.), cert. denied, 113 S.W.2d 194 (1992). *National*

Coal Corp. v. National Union Fire Insurance Co., 2007 WL 2385388 (E.D. Tenn. 2007) . In

order to enforce an oral agreement to settle, the party seeking to enforce it must prove "(1)

mutual assent to the contract's terms, and (2) that the terms are sufficiently definite to be

enforceable." National Coal Corp. at p. 3, citing Castelli v. Lien, 910 S.W.2d 420, 426-47

(Tenn. Ct. App. 1995).

There can be little doubt that the terms agreed upon by the parties are definite enough to

be enforced and that there was been mutual assent to the terms. The four points agreed upon are

sufficient to constitute a settlement. Ms. Watkins has already fulfilled one of the conditions of

the settlement, and there is no dispute as to the consideration. The sticking point here is

Occasions' refusal to execute a confidential settlement agreement which contains mutual

releases, after having agreed to do so.

Accordingly, Watkins seeks an order by this Court to enforce the agreement reached

between the parties.

Respectfully submitted this 22nd of September, 2008.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing pleading has been served upon the following counsel for the parties in interest herein by delivering same to the offices of said counsel, or by mailing same to the offices of said counsel by United States Mail with sufficient postage thereon to carry the same to its destination.

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This the 22nd day of September, 2008.

s/W. Kyle Carpenter